August 7, 2023

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

J. MICHAEL SEABRIGHT
United States District Judge

FEDERAL JURY
INSTRUCTIONS IN CIVIL CASES

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PRELIMINARY INSTRUCTIONS

COURT'S PRELIMINARY INSTRUCTION "A"
DUTY OF THE JURY

You now are the jury in this case, and I want to take a few minutes to tell you something about your duties as jurors and to give you some preliminary instructions. At the end of the trial, I will give you more detailed written instructions that will control your deliberations.

When you deliberate, it will be your duty to weigh and to evaluate all the evidence received in the case and, in that process, to decide the facts. You will apply the law as I give it to you—whether you agree with the law or not—to the facts as you find them. You must decide the case solely on the evidence and the law before you.

Perform these duties fairly and impartially. Do not be influenced by any person's race, color, religious beliefs, national ancestry, sexual orientation, gender, gender identity, or economic circumstances. Also, do not be influenced by personal likes or dislikes, sympathy, prejudice, fear, public opinion, or biases, including unconscious biases. Unconscious biases are stereotypes, attitudes, or preferences that people may consciously reject but may be expressed without conscious awareness, control, or intention. Like conscious bias, unconscious bias can affect how we evaluate information and make decisions.

COURT'S PRELIMINARY INSTRUCTION "B"
WHAT IS EVIDENCE

The evidence you are to consider in deciding the facts of the case are:

First, the sworn testimony of any witness; and

Second, the exhibits that are admitted in evidence; and

Third, any facts to which the parties agree.

COURT'S PRELIMINARY INSTRUCTION "C"
WHAT IS NOT EVIDENCE

The following things are not evidence, and you must not consider them as evidence in deciding the facts of this case:

First, statements and arguments of the attorneys;

Second, questions and objections of the attorneys;

Third, testimony that I instruct you to disregard; and

Fourth, anything you may see or hear when the court is not in session even if what you see or hear is done or said by one of the parties or by one of the witnesses.

COURT'S PRELIMINARY INSTRUCTION "D"
DIRECT AND CIRCUMSTANTIAL EVIDENCE

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as the testimony of an eyewitness. Circumstantial evidence is indirect evidence, that is, proof of a chain of facts from which you could find that another fact exists, even though it has not been proved directly.

You are to consider both direct and circumstantial evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

COURT'S PRELIMINARY INSTRUCTION "E"
EVIDENCE FOR LIMITED PURPOSE

During the course of the trial, some evidence may be admitted for a limited purpose only. When I instruct you that an item of evidence has been admitted for a limited purpose, you must consider it only for that limited purpose and for no other.

COURT'S PRELIMINARY INSTRUCTION "F"
RULING ON OBJECTIONS

There are rules of evidence that control what can be received in evidence. When a lawyer asks a question or offers an exhibit into evidence and a lawyer on the other side thinks that the question or exhibit is not permitted by the rules of evidence, that lawyer may object. If I overrule the objection, the question may be answered or the exhibit admitted into evidence. If I sustain the objection, the question cannot be answered, or the exhibit cannot be admitted into evidence. Whenever I sustain an objection to a question, you must ignore the question and must not guess what the answer would have been.

Sometimes I may order that evidence be stricken from the record and that you disregard or ignore that evidence. That means that when you are deciding the case, you must not consider the evidence that I told you to disregard.

COURT'S PRELIMINARY INSTRUCTION "G"
CREDIBILITY OF WITNESSES

You are the sole judges of the credibility or believability of each witness and the weight to be given to his or her testimony. In evaluating the testimony of a witness, you may consider: (1) the opportunity and ability of the witness to see or hear or know the things testified to; (2) the witness' memory; (3) the witness' manner while testifying; (4) the witness' interest in the outcome of the case, if any; (5) the witness' bias or prejudice, if any; (6) whether other evidence contradicted the witness' testimony; (7) the reasonableness of the witness' testimony in light of all the evidence; and (8) any other factors that bear on believability. You may accept or reject the testimony of any witness in whole or in part. That is, you may believe everything a witness says, or part of it, or none of it.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or non-existence of any fact. You may find that the testimony of a smaller number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

COURT'S PRELIMINARY INSTRUCTION "H"
BENCH CONFERENCES AND RECESSES

During the trial, I may need to take up legal matters with the attorneys privately, either by having a conference at the bench when the jury is present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is not to keep relevant information from you, but to decide how certain evidence is to be treated under the rules of evidence and to avoid confusion and error.

Of course, we will do what we can to keep the number and length of these conferences to a minimum. I may not always grant an attorney's request for a conference. Do not consider my granting or denying a request for a conference as any indication of my opinion of the case or what your verdict should be.

COURT'S PRELIMINARY INSTRUCTION "I"
BURDEN OF PROOF

When a party has the burden of proof on any claim by a preponderance of the evidence, it means you must be persuaded by the evidence that the claim is more probably true than not true.

[When a party has the burden of proving any claim or defense by clear and convincing evidence, it means that the party must present evidence that leaves you with a firm belief or conviction that it is highly probable that the factual contentions of the claim or defense are true. This is a higher standard of proof than proof by a preponderance of the evidence, but it does not require proof beyond a reasonable doubt.]

You should base your decision on all the evidence, regardless of which party presented it.

COURT'S PRELIMINARY INSTRUCTION "J"
CONDUCT OF THE JURY

I will now say a few words about your conduct as jurors.

Keep an open mind throughout the trial, and do not decide what the verdict should be until you and your fellow jurors have completed your deliberations at the end of the case.

Because you must decide this case based only on the evidence received in the case and on my instructions as to the law that applies, you must not be exposed to any other information about the case or to the issues it involves during the course of your jury duty. Thus, until the end of the case or unless I tell you otherwise, I order as follows:

First, do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the merits of the case or anything to do with it. This restriction includes discussing the case in person, in writing, by phone, computer, email, text messaging, any form of social media, or any other means of communication. This restriction applies to communicating with your fellow jurors until you begin deliberations, family members, your employer, the media or press, and the people involved in the trial. Of course, you may notify your family and your employer that you have been seated as a juror in

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the case, and how long you expect the trial to last. But you cannot communicate about the substance of the trial until after the jury reaches a verdict. If you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and to report the contact to the court.

Second, do not read, watch, or listen to any news or media accounts or commentary about the case or anything to do with it; do not do any research, such as searching the Internet or using other reference materials online or otherwise; and do not make any investigation or in any other way try to learn anything about the case on your own. This prohibition includes any research about the facts of the case, the law, or the people involved—including the parties, the witnesses or the lawyers—until you have been excused as jurors. If you happen to read or hear anything touching on this case in the media, turn away and report it to me as soon as possible.

These rules protect each party's right to have this case decided only on evidence that has been presented here in court. Witnesses here in court take an oath to tell the truth, and the accuracy of their testimony is tested through the trial process. If you do any research or investigation outside the courtroom, or gain any information through improper communications, then your verdict may be

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influenced by inaccurate, incomplete, or misleading information that has not been tested by the trial process. Each of the parties is entitled to a fair trial by an impartial jury, and if you decide the case based on information not presented in court, you will have denied the parties a fair trial. Remember, you have taken an oath to follow the rules, and I expect that you will do so.

A juror who violates these restrictions jeopardizes the fairness of these proceedings. A mistrial may result that would then require the entire trial process to start over. If any juror is exposed to any outside information, please notify the court immediately.

Also, please understand that all the participants in the trial will not be able to speak to you other than when court is in session and as permitted by the court. This includes the lawyers, parties, witnesses, and even me. So please do not think that anyone is being rude if it appears any of the participants are ignoring you when court is not in session. As part of this rule, also understand that you as jurors cannot speak to any of the participants, including witnesses, inside or outside of the courtroom.

COURT'S PRELIMINARY INSTRUCTION "K"
NO TRANSCRIPT AVAILABLE TO THE JURY

At the end of the trial, you will have to make your decision based on what you recall of the evidence. You will not have a written transcript of the trial. I urge you to pay close attention to the testimony as it is given.

COURT'S PRELIMINARY INSTRUCTION "L"
TAKING NOTES DURING TRIAL

If you wish, you may take notes during the evidence phase of the trial to help you remember the evidence. If you do take notes, please keep them to yourself until you and your fellow jurors go to the deliberation room to decide the case. Do not let note-taking distract you from being attentive. When you leave the courtroom, your notes should be left in the courtroom—just close the notepad and leave it on your chair. No one will read your notes, including the parties, court staff, and me. At the conclusion of the trial, your notes will be destroyed.

Whether or not you take notes, you should rely on your own memory of the evidence. Notes are only to assist your memory. You should not be overly influenced by your notes or those of your fellow jurors.

COURT'S PRELIMINARY INSTRUCTION "M"
OUTLINE OF THE TRIAL

The next phase of the trial will now begin. First, each side may make an opening statement. An opening statement is not evidence. It is simply an outline to help you understand what that party expects the evidence will show. A party is not required to make an opening statement.

The plaintiff will then present evidence and counsel for the defendant may cross-examine. Then, if the defendant chooses to offer evidence, counsel for the government may cross-examine.

After the evidence has been presented, the attorneys will make closing arguments and I will instruct you on the law that applies to the case.

After that, you will begin your deliberations.

FINAL INSTRUCTIONS

COURT'S INSTRUCTION NO. 1
DUTY OF THE JURY

Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the law that applies to this case. Each of you will have a copy of these instructions with you in the deliberation room.

You, as jurors, are judges of the facts. It is your duty to weigh and to evaluate all the evidence received in the case and, in that process, to decide the facts. It is also your duty to apply the law in these instructions to the facts as you find them, whether you agree with the law or not and regardless of the consequences. You must not substitute or follow your own notion as to what the law is or ought to be. You must decide the case solely on the evidence and the law. You will recall that you took an oath promising to do so at the beginning of the case.

Also, do not be influenced by any person's race, color, religious beliefs, national ancestry, sexual orientation, gender, gender identity, or economic circumstances. Do not be influenced by personal likes or dislikes, sympathy, prejudice, fear, public opinion, or biases, including unconscious biases. Unconscious biases are stereotypes, attitudes, or preferences that people may consciously reject but may be expressed without conscious awareness, control, or

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intention.

You must follow all these instructions and not single out some and ignore others; they are all important.

[You should decide the case as to each [plaintiff][defendant][party] separately. Unless otherwise stated, the instructions apply to all parties.]

COURT'S INSTRUCTION NO. 2
EVIDENCE—EXCLUDING ARGUMENT OF COUNSEL

As stated earlier, it is your duty to determine the facts, and in doing so, you must consider only the evidence I have admitted in the case. The evidence you are to consider in deciding the facts consists of the following:

First, the sworn testimony of any witness; [and]

Second, the exhibits admitted in evidence[.] [; and]

[Third, any facts to which the parties have agreed.]

In reaching your verdict you may consider only the testimony and exhibits received in evidence. The following things are not evidence, and you may not consider them in deciding what the facts are:

First, questions, statements, objections, and arguments by the lawyers are not evidence. The lawyers are not witnesses. Although you must consider a lawyer's questions to understand the answers of a witness, the lawyer's questions are not evidence. Similarly, what the lawyers have said in their opening statements, closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers state them, your memory of the facts controls.

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Second, any testimony that I have excluded, stricken, or instructed you to disregard is not evidence. [In addition, some evidence was received only for a limited purpose; when I have instructed you to consider certain evidence in a limited way, you must do so.]; and

Third, anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received during the trial.

COURT'S INSTRUCTION NO. 3
EVIDENCE—EXCLUDING STATEMENTS OF JUDGE

During the course of the trial I may have occasionally made comments to the lawyers, or asked questions of a witness, or admonished a witness concerning the manner in which he or she should respond to the questions of counsel. Do not assume from anything I said that I have any opinion concerning any of the issues in this case. Except for my instructions to you on the law, you should disregard anything I said during the trial in arriving at your own findings as to the facts.

COURT'S INSTRUCTION NO. 4
EVIDENCE—STIPULATIONS

In this case, the parties have agreed, or stipulated, to certain facts. This means that they agree that these facts are true. You should therefore treat these facts as having been conclusively proved.

COURT'S INSTRUCTION NO. 5
EVIDENCE—DIRECT AND CIRCUMSTANTIAL

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as the testimony of an eyewitness. Circumstantial evidence is indirect evidence, that is, proof of a chain of facts from which you could find that another fact exists, even though it has not been proved directly.

So, although you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the evidence in the case.

You are to consider both direct and circumstantial evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

COURT'S INSTRUCTION NO. 6
EVIDENCE—CREDIBILITY OF WITNESSES

I have said that you must consider all of the evidence. But this does not mean that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or believability of each witness and the weight to be given to his or her testimony. In evaluating the testimony of a witness, you may consider: (1) the opportunity and ability of the witness to see or hear or know the things testified to; (2) the witness' memory; (3) the witness' manner while testifying; (4) the witness' interest in the outcome of the case, if any; (5) the witness' bias or prejudice, if any; (6) whether other evidence contradicted the witness' testimony; (7) the reasonableness of the witness' testimony in light of all the evidence; and (8) any other factors that bear on believability. You may accept or reject the testimony of any witness in whole or in part. That is, you may believe everything a witness says, or part of it, or none of it.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or non-existence of any fact. You may find that the testimony of a smaller number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

COURT'S INSTRUCTION NO. 7
EVIDENCE—DEPOSITIONS

Certain testimony has been read into evidence from depositions. A deposition is testimony taken under oath before the trial and preserved in writing. You are to consider that testimony the same as if it had been given in court.

COURT'S INSTRUCTION NO. 8
EVIDENCE—INTERROGATORIES

During the course of the trial you heard reference to the word "interrogatory." An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. You are to consider interrogatories and the answers to interrogatories the same as if the questions had been asked and answered here in court.

COURT'S INSTRUCTION NO. 9
EVIDENCE—ADMISSIONS

During the course of the trial you heard reference to the phrase "requests for admissions." A request for admission is a written statement of fact that one party asks the other party to confirm or deny. These admissions were given in writing before trial, and you are to consider the answers to requests for admissions as having been proved.

COURT'S INSTRUCTION NO. 10
EVIDENCE—EXPERT WITNESSES

You have heard testimony from [*name*] who provided opinion testimony and the reasons for those opinions. This opinion testimony is allowed because of the specialized knowledge, skill, experience, training, or education of this witness.

Such opinion testimony should be judged like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness' knowledge, skill, experience, training, or education, the reasons given for the opinion, and all the other evidence in the case.

COURT'S INSTRUCTION NO. 11
IMPEACHMENT—GENERALLY

A witness may be discredited or impeached by contradictory evidence by a showing that: (1) the witness testified falsely concerning a material matter; or (2) at some other time, the witness said or did something that is inconsistent with the witness' present testimony; or (3) at some other time, the witness failed to say or do something that would be consistent with the present testimony had it been said or done.

If you believe that any witness has been so discredited or impeached, then it is for you alone to decide how much credibility or weight, if any, to give to the testimony of that witness.

COURT'S INSTRUCTION NO. 12A
BURDEN OF PROOF—PREPONDERANCE OF THE EVIDENCE—
Single Claim

The burden is on the Plaintiff in a civil action such as this to prove every essential element of the claim by a "preponderance of the evidence." A preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, has more convincing force and produces in your minds a belief that what is sought to be proved is more likely true than not true. In other words, to establish a claim by a preponderance of the evidence merely means to prove that the claim is more likely so than not so.

[When a party has the burden of proving any claim or defense by clear and convincing evidence, it means that the party must present evidence that leaves you with a firm belief or conviction that it is highly probable that the factual contentions of the claim or defense are true. This is a higher standard of proof than proof by a preponderance of the evidence, but it does not require proof beyond a reasonable doubt.]

In determining any fact in issue, you may consider the testimony of all The witnesses, regardless of who called them, and all the exhibits received in evidence, regardless of who produced them.

If the proof fails to establish any essential element of the Plaintiff's

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claim by a preponderance of the evidence, you should find for the Defendant as to that claim.

COURT'S INSTRUCTION NO. 12B
BURDEN OF PROOF—PREPONDERANCE OF THE EVIDENCE—
Multiple Claims

In a civil action such as this, each party asserting a claim has the burden of proving every essential element of that claim by a "preponderance of the evidence." A preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, has more convincing force and produces in your minds a belief that what is sought to be proved is more likely true than not true. In other words, to establish a claim by a preponderance of the evidence merely means to prove that the claim is more likely so than not so.

[When a party has the burden of proving any claim or defense by clear and convincing evidence, it means that the party must present evidence that leaves you with a firm belief or conviction that it is highly probable that the factual contentions of the claim or defense are true. This is a higher standard of proof than proof by a preponderance of the evidence, but it does not require proof beyond a reasonable doubt.]

Where more than one claim is involved, as in this case, you should consider each claim, and the evidence pertaining to it, separately, as you would had each claim been tried before you separately; but in determining any fact in issue, you may consider the testimony of all the witnesses, regardless of who called them,

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and all the exhibits received in evidence, regardless of who produced them.

If a preponderance of the evidence does not support each essential element of a claim, then you should find against the party having the burden of proof as to that claim.

COURT'S INSTRUCTION NO. 13
MULTIPLE PLAINTIFFS

There is more than one Plaintiff in this lawsuit. You should decide the case of each Plaintiff separately from and independently of the other, as if you were trying different lawsuits.

All instructions given apply to the case of each Plaintiff unless otherwise stated.

COURT'S INSTRUCTION NO. 14
MULTIPLE DEFENDANTS

Although there is more than one Defendant in this lawsuit, it does not follow from that fact alone that if one is liable all are liable. Each Defendant is entitled to a fair and separate consideration and is not to be prejudiced by your decision as to the others. All instructions given apply to the case against each Defendant unless otherwise stated.

You must decide each Defendant's case separately.

COURT'S INSTRUCTION NO. 15
DAMAGES INSTRUCTION NOT RELEVANT TO LIABILITY

Of course, the fact that I have given you instructions concerning the issue of the Plaintiff's damages should not be interpreted in any way as an indication that I believe the Plaintiff should, or should not, prevail in this case.

COURT'S INSTRUCTION NO. 16
TAKING NOTES DURING TRIAL

Some of you took notes during the trial. Whether or not you took notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by your notes or those of other jurors.

COURT'S INSTRUCTION NO. 17
NO OUTSIDE RESEARCH

Because you must base your verdict only on the evidence received in the case and on these instructions, I remind you that you must not be exposed to any other information about the case or the issues it involves. Except for discussing the case with your fellow jurors during your deliberations, I order as follows:

First, do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the merits of the case or anything to do with it. This restriction includes discussing the case in person, in writing, by phone, computer, email, text messaging, any form of social media, or any other means of communication. This restriction applies to communicating with your family members, your employer, the media or press, and the people involved in the trial. If you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and to report the contact to the court.

Second, do not read, watch, or listen to any news or media accounts or commentary about the case or anything to do with it; do not do any research, such

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as searching the Internet or using other reference materials online or otherwise; and do not make any investigation or in any other way try to learn anything about the case on your own.

The law requires these restrictions to ensure the parties have a fair trial based on the same evidence that each party has had an opportunity to address. A juror who violates these restrictions jeopardizes the fairness of these proceedings. A mistrial may result that would then require the entire trial process to start over. If any juror is exposed to any outside information, please notify the court immediately.

COURT'S INSTRUCTION NO. 18
DUTY TO DELIBERATE

Your verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. In other words, your verdict must be unanimous.

It is your duty as jurors to consult with one another and to deliberate with one another with a view towards reaching an agreement if you can do so. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are not partisans. You are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

COURT'S INSTRUCTION NO. 19
QUESTIONS POSED BY JURORS

During the course of the trial, questions were posed by members of the jury. You should evaluate the answers to those questions in the same manner that you evaluate all of the other evidence.

COURT'S INSTRUCTION NO. 20
VERDICT FORM

Upon retiring to the deliberation room you should first select one juror to act as your foreperson who will preside over your deliberations. A verdict form will be provided to you.

(Explain Verdict Form)

Take the verdict form to the jury room and when you have reached unanimous agreement as to your verdict, have your foreperson fill it in, date and sign it, and then return to the courtroom.

If, during your deliberations, you desire to communicate with the court, please put your message or question in a note, have the foreperson sign the note, and pass the note to the marshal who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you return to the courtroom so that I can address you orally. I caution you, however, that you should never state or specify your numerical division at any time. For example, you should never state that "x" number of jurors are leaning or voting one way and "x" number of jurors are leaning or voting another way.